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1951. **File No** O. Agreement 38/51

Legal Deptt

GT **BRANCH**

Subject:— Opinions on the Agreements executed by the Government with the Parties

G/E,

File No. O. Agreement/51

GT 38/51

C O N T E N T S.

Legal Department File No. O. Agreements /51(G.Br.)

Sr.No.	Date & No.	Subject	pages
		Opinions on the Agreements executed by the Government with the parties.	
	O.No.G-65 13-1-51.	Whether it is necessary to obtain s ignatures of the suppliers on the notices issued by M/s.Polson Ltd. informing them that they would be making supplies on the clear understanding that milk supplied by them would be confiscated if not upto the standard laid down by the Milk Commissioner. -	1-2.
2.	O.No. G-3 3-1-51.	Question regarding recovery of compensation paid to the distributors in respect of yarn. (Copies not made).-	3-4.
3	O.No. G-21 11-1-51.	Whether the contract for construction of Labore Sheds in Banaskantha Distt. should be signed on behalf of Govt. by the Collector or by the Local Executive Engineer. -	5-6.
4.	O.NO. G-119 2-4-51.	Re : Acceptance of money by a certain party from Govt. in respect of certain contract. Whether, if the party accepts the money without any protest, it can be said that he has accepted it in full satisfaction of his contract (Copy not made).-	7-12.
5.	O.No. G-218 5-6-51.	Re : Agreement entered by certain party with Govt. for supply in Kadbi to Govt. Payment by Govt. in respect of - (Copies not made).-	13-14.
6.	O.No. G-347 7-8-51.	Re : Cloth mortgaged to the Bank by certain Society - as security - for the loan taken from the Bank whether Govt. can have priority over the money due to the Bank .-	15-20.
7.	O.No. G-308 27-7-51.	Re : Contract entered into by Govt. with certain Godown Keepers for storage of Govt. goods. Request by Govt. to accommodate some additional goods. Question regarding payment in respect of storage of additional goods (Copies not made) .-	21-22.
8.	O.No. G-414 6-9-51.	Re :Claim by Govt. against Steamship Co. on Account of short supply made after a lapse of about 11 months. (Copies not made) .-	23-24

Sr.No.	R.I./O.No.	Subject	page
9.	O.No.G-393 27-8-51.	Re :Refund of deposit to the Contractor .-	25-2
10.	O.No. G-576 26-11-51.	Re : Termination of agreement .-	27-30
11.	O.No. G-392 27-8-51.	Re : Return of Security deposit to the contractors. -	31-32.

S.C. 24/7
5 copies.

Office of the R.L.A .

The question raised for R.L.A.'s opinion is whether it is necessary to obtain signatures of the suppliers on the notices issued by M/s. Polson Ltd. informing them that they would be making supplies on the clear understanding that milk supplied by them would be confiscated if not upto the standard laid down by the Milk Commissioner.

The view taken in para 4 of the letter dated 9th December 1950 written by M/s. Polson to the Milk Commissioner, is not correct. There is no privity of contract between the suppliers and Government and the revised standard for accepting only milk containing a higher percentage of fat has been laid down for accepting milk by Government from the processors. Under condition 7 of the existing contract between Government and Polsons, the letter are bound to purchase milk from suppliers at the rate fixed by Government from time to time. But Government are not directly concerned with the suppliers and therefore the Milk Commissioner used not advise Polsons as to how best to inform the suppliers about the new arrangement. That is a matter between Polsons and the Suppliers.

The new arrangement revises the percentage of fats required by Government and it is an amendment of condition 3 of the contract. It is advisable to follow the provisions of Article 299 of the constitution and enter into regular contracts in respect of such matters rather than to depend on such letters only. It is true that there is provision in condition 24 of the contract for issue of instructions by Government but amendments of the conditions of the contract cannot be made by issuing such instructions.

Sd/- P.M.Lad
11-1

Remembra-ncer of Legal Affai-

U.R. to M.C. No. G-26 dated the 12th Jan. 1951.

Office of the R.L.A

Under item 6 of the Government Resolution, Home Department No. 1758/6 dated 26th January 1950, the Chief Local Officer of the Department for which public works are to be executed has been authorised to execute the contract. The Collector is presumably the Chief Local Officer of the Civil Supplies Department in the District and he may execute the contracts in this case. However, even though the Collector executes the contract and not the Executive Engineer, action under clause 3(a) will have to be still taken by the Executive Engineer.

Sd/-P.M.Lad
10-1

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-21, dated the 11th January 1951.

S.C. 21/7

4 copies.

Office of the R.L.A .

If the cloth was mortgaged to the Bank specifically, the Bank undoubtedly is a secured creditor. A secured creditor means any person who holds a mortgage, a charge or a lien on the property of the debtor (see I.L.R. 58 Bom. 290). Government cannot have priority over the money due to the Bank.

Sd/-J.R.Dhurandhar.
6-8

Remembrancer of Legal Affairs.

U.R. to S.T.C., No. G-347 , dated the 7th August 1951.

S.C. 21/7
4 copies.

Legal Department.

The contract of M/s. Ardeshir B. Cursetjee & Sons. with the Government of Bombay came to an end on 31st December 1947 from which date the dock-clearance work was taken over by the Regional Food Commissioner on behalf of the Government of India. From the letter dated the 30th December 1947 from the R.F.C. to M/s. Ardeshir B. Cursetjee & Sons it appears that it was agreed between the Government of India and the Contractors that pending execution of a regular contract with the Government of India, the terms and conditions of work and duties, functions, liabilities and responsibilities on clearing agents which existed during the period from 1st May 1947 to 31st December 1947 while working as clearing agents for Government of Bombay were to be continued. Later the Government of India through the R.F.C. executed an agreement with the Contractors on 23rd April 1948 but condition 5 of the said agreement provided that the agreement was to be in operation from 1st January 1948 to 30th April 1948. In this agreement there is a provision in para 4 making it obligatory on the Contractor to deposit a security of Rs. 10,000 with the Government of India for the proper performance of the work specified in the agreement and for carrying out of the terms and conditions thereof. The R.F.C. has stated in his letter dated the 3rd May 1951 that no security was taken from the Contractor because the condition relating to it was later relaxed by the Ministry of Food. The deposit of Rs. 10,000 lying with the Government of Bombay is in respect of a contract with this Government and it would not be lawful to refuse to return it to the party and

adjust it against the amount which the Government of India is claiming from the Contractor.

Sd/- B.D.M.

Additional Secretary to Government.

U.R. to D.C.S. (Acccunts), Nk No. G- 333, dt. 27th Aug. '51.

S.C. 21/7

4 copies.

Legal Department.

In view of the provisions in clause 11 of the agreement, the agreement # can be terminated by Government earlier than 31st December 1951. The District Magistrate, West Khandesh's proposal to terminate the agency by giving one month's notice may therefore be approved by the Civil Supplies Department. However as there would be hardly any margin left between that date and 31st December 1951, it would be advisable for the District Magistrate to give a month's notice to the Association informing them that the agreement will not be renewed after the 31st December 1951.

Sd/- B.D.M.
Additional Secretary to Government.

U.R. to D.C.S.(Acctts), No. G- 576 , dated the 26th November 1951.

S.C. 21/7
4 copies.

Legal Department.

Under condition 3 of the agreement entered into by M/s. E. Abraham and Sons with the Government of Bombay, Government undertook to provide empty gunnies and the Contractor was bound to render proper account of gunnies and twine supplied for each steamer separately separately. Under condition 21 of the said Agreement the Contractor had to deposit with Government a security of Rs. 10,000 for the proper performance of the work specified in the agreement and for the carrying out of the terms and conditions thereof. Government had authority under the agreement to forfeit the deposit to re-imburse themselves for any damage or loss incurred by Government due to the negligence or improper or unworkmanlike performance of the work contracted for and done by the Contractor. As under condition 3 of the agreement the Contractors were bound to render proper account of the gunnies supplied to them by Government and as the Contractors failed to account for 19,959 gunnies out of the total 36,58,578 gunnies supplied, Government could re-imburse itself from the security deposit to the extend of the loss so occasioned to Government. In this case the loss amounted to Rs. 13,328/14/- and Government's action in appropriating the whole of the security deposit of Rs. 10,000 to such loss is quite legal and proper. Government could have still claimed the balance of Rs. 3328/14/- from the Contractors but in consultation with the Director General of Food, Food Department, New Delhi, Government waived the recovery of the balance purely as a matter of grace. This decision of the Ministry of Food was communicated to the Contractors who through their Solicitors M/s. Matubhai Jamietram and Madan informed Government on 7th June 1949 that they agree to the decision. Their contention that their Solicitors agreed to settle Government's claim at Rs. 10,000 on condition that their other outstanding bills were to be immediately paid by G

[illegible]rrect. The Contractors are therefore not entitled to the return of the security deposit of Rs. 10,000 as claimed by them. The threatened suit, if filed for the recovery of this amount would be defensible provided Government are in a position to prove that 19,959 bags were not accounted for by the Contractor and that the loss of the price thereof to Government was due to the negligence of the Contractor.

Sd/- B.D.M.

Additional Secretary to Government.

U.R. to F.C., No. G-332 , dated the 27th August 1951.

S.C. 21/7

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